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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA AND  
THE STATE OF NEVADA *ex rel.* MARY  
KAYE WELCH,

Plaintiffs,

v.

MY LEFT FOOT CHILDREN'S  
THERAPY, LLC, JON GOTTLIEB, AND  
ANN MARIE GOTTLIEB,

Defendants.

Case No. 2:14-cv-01786-MMD-(GWF)

**DEFENDANTS MY LEFT FOOT  
CHILDREN'S THERAPY, JON  
GOTTLIEB, AND ANN MARIE  
GOTTLIEB'S RESPONSE TO UNITED  
STATES' AND STATE OF NEVADA'S  
STATEMENT OF INTEREST IN  
RESPONSE TO MOTION TO COMPEL  
ARBITRATION**

The United States and the State of Nevada (collectively, the "Government") ask the Court to deny My Left Foot Children's Therapy, LLC, John Gottlieb, and Ann Marie Gottlieb's Motion to Compel Arbitration (collectively, "MLF"), but they offer no basis for doing so.

First, the Government argues that arbitration cannot be compelled because the Government is not a party to the Arbitration Agreement between Ms. Welch and MLF. As MLF explained in its Reply (Docket No. 24), the United States Supreme Court's decision in *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928 (2009), forecloses the Government's argument that it is a party to this dispute whose presence disallows arbitration. In *Eisenstein*, the Supreme Court held that, unless the

United States intervenes in a False Claims Act (“FCA”) action, it is not considered a party. *Id.* at 933. The Government does not cite *Eisenstein* or any other case holding that the United States’ involvement in an FCA case as the “real party in interest” prevents the Court from compelling arbitration of an FCA claim. Having declined to intervene, the Government cannot, as the real party in interest, prevent this matter from being arbitrated.

The Government likewise does not acknowledge the robust federal policy favoring enforcement of arbitration agreements or the case law confirming that *qui tam* actions brought under the FCA are subject to arbitration. The Federal Arbitration Act “reflects ‘an emphatic federal policy’ in favor of arbitration[.]” and the “principal purpose” of the Act is to “ensur[e] that private arbitration agreements are enforced according to their terms.” *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1748 (2011) (citations omitted); *Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928, 932 (9th Cir. 2013). Consistent with this policy, courts addressing the issue have repeatedly held that FCA claims brought under § 3279(a) falling within the scope of the applicable arbitration agreement are subject to arbitration. *United States v. Bankers Ins. Co.*, 245 F.3d 315, 323-25 (4th Cir. 2001) (compelling arbitration of claims brought by the Government under § 3279(a)); *Deck v. Miami Jacobs Bus. College Co.*, No. 3:12-cv-63, 2013 U.S. Dist. LEXIS 14845, \*22-25 (S.D. Ohio Jan. 31, 2013) (compelling students’ FCA claims to arbitration because they fell within scope of their enrollment agreements, which contained an arbitration clause); *United States ex rel. Hicks v. Evercare Hosp.*, No. 1:12-cv-887, 2015 U.S. Dist. LEXIS 96246, \*8 (S.D. Ohio July 23, 2015) (compelling former employees’ FCA claims to arbitration). Like Ms. Welch, the Government does not identify a single case holding that *qui tam* actions brought under the FCA are not subject to arbitration as a matter of law.

Finally, the Government argues that arbitration should not be compelled because arbitration will not be binding on it. This is no reason to deny arbitration. MLF has asked the Court to stay this action pending the outcome of the arbitration. Motion (Docket No. 21) at 8-10. At the conclusion of the arbitration, the Government can either consent to resolution of the claims as determined by the arbitrator or resume litigation of the claims in this Court. *See Hicks*, 2015 U.S. Dist. LEXIS 96246, \*9 (ordering that, following arbitration of the FCA *qui tam* claims, the parties must either ask the Attorney

1 General to consent to resolution of the FCA claims as determined in arbitration or resume litigation of  
2 the claims in court); *Deck*, 2013 U.S. Dist. LEXIS 14845, \*28 (same). Because the Government's  
3 interest in this dispute will be fully protected, the Motion to Compel Arbitration should be granted.

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5 Dated: November 18, 2015

AKIN GUMP STRAUSS HAUER & FELD LLP  
Shawn Hanson  
Maria Ellinikos

7 By           /s/ Maria Ellinikos            
8 Maria Ellinikos  
9 Attorneys for defendants My Left Foot Children's  
10 Therapy, LLC, Jon Gottlieb and Ann Marie  
11 Gottlieb  
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## CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 580 California Street, Suite 1500, San Francisco, California 94104. On November 18, 2015, I served the foregoing document(s) described as: **DEFENDANTS MY LEFT FOOT CHILDREN'S THERAPY, JON GOTTLIEB, AND ANN MARIE GOTTLIEB'S RESPONSE TO UNITED STATES' AND STATE OF NEVADA'S STATEMENT OF INTEREST IN RESPONSE TO MOTION TO COMPEL ARBITRATION**, on the interested party(ies) below, using the following means:

**All parties identified for Notice of Electronic Filing generated by the Court's CM/ECF system under the referenced case caption and number**

☒ BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above.

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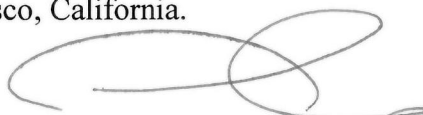
☒ BY UNITED STATES MAIL. I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at San Francisco, California.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 18, 2015, at San Francisco, California.

Jeremias V. Cordero

[Print Name of Person Executing Proof]



[Signature]